

Port Counsel's Role in Commercial Terminal Lease Terms

Paul M. Heylman, Esq.

Saul Ewing Arnstein & Lehr LLP

AAPA 2019 Port Administration & Legal Issues Seminar

February 12, 2019

Ft. Lauderdale, FL

**SAUL EWING
ARNSTEIN
& LEHR^{LLP}**

Legal Issues in Commercial Lease Terms

- Shipping Act filing requirements
 - MTFA exemption
 - Increased oversight by FMC
- Different terms for different tenants
 - FMC deference to Port decisions
 - Protecting business judgments
- Beyond initial compliance - looking down the road at possible future problems



FMC Deference to Port Business Judgment

- Oversight and deference
 - Public Port Authorities responsible for business decisions, but
 - FMC still responsible for proper oversight
- Process, Process, Process
 - Proper record for review helps deference
 - Process to show process and result appropriate
 - What not to do

Filing Lease Agreements

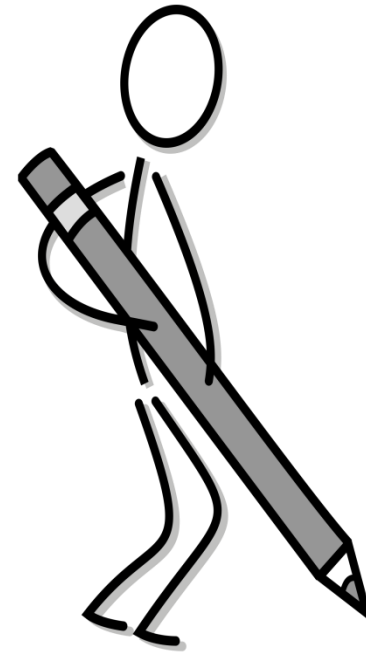
- MTFAs exemption
 - Why it matters – 45-day waiting period
 - When most issues arise – as ancillary to larger dispute
- Public disclosure under Shipping Act
- Coloring outside the lines – non-exempt terminal leases
 - What is a Cooperative Working Agreement?
 - What happens where there is an unfiled CWA?
- FMC revived interest in the MTFAs exemption?
 - FMC nationwide review of all filings
 - Does FMC Docket 16-04 have implications for terminal lease exemptions?

Legal Framework

- Shipping Act undue prejudice provisions
- MFN provisions
- Non-compensatory rates
- Involvement in tenant's business
 - Having clear terms on when the Port can, and cannot, weigh in on tenant disputes with third parties
 - Implications of the Port having authority to tell tenants what to do

Some Practical Concerns

- Capital investment
- Incentive programs – even handedness
- Harmonizing different cost structures
 - Throughput versus ground lease
 - Different rates for different terminals
- Different facilities access



Beyond Initial Legal Compliance

- Planning for problems that may arise down the road
- Lease terms versus expectations
- Enforcement and waiver of lease terms
- Implications regarding other tenants



Questions?

Baltimore

Lockwood Place
500 East Pratt Street, Suite 900
Baltimore, MD 21202-3171
T: 410.332.8600 • F: 410.332.8862

Boston

131 Dartmouth Street
Suite 501
Boston, MA 02116
T: 617.723.3300 • F: 617. 723.4151

Chesterbrook

1200 Liberty Ridge Drive
Suite 200
Wayne, PA 19087-5569
T: 610.251.5050 • F: 610.651.5930

Chicago

161 North Clark
Suite 4200
Chicago, IL 60601
T: 312.876.7100 • F: 312.876.0288

Fort Lauderdale

200 E. Las Olas Blvd.
Suite 1000
Fort Lauderdale, FL 33301
T: 954.713.7600 • F: 954.713.7700

Harrisburg

Penn National Insurance Plaza
2 North Second Street, 7th Floor
Harrisburg, PA 17101-1619
T: 717.257.7500 • F: 717.238.4622

Miami

Southeast Financial Center
200 S. Biscayne Blvd., Suite 3600
Miami, FL 33131
T: 305.428.4500 • F: 305.374.4744

Minneapolis

33 South Sixth Street
Suite 4750
Minneapolis, MN 55402
T: 612.217.7130 • F: 612.677.3844

New York

1270 Avenue of the Americas, Suite
2005
New York, NY 10020
T: 212.980.7200 • F: 212.980.7209

Newark

One Riverfront Plaza
Newark, NJ 07102
T: 973.286.6700 • F: 973.286.6800

Philadelphia

Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2186
T: 215.972.7777 • F: 215.972.7725

Pittsburgh

One PPG Place
30th Floor
Pittsburgh, PA 15222
T: 412.209.2500 • F: 412.209.2570

Princeton

650 College Road East, Suite 4000
Princeton, NJ 08540-6603
T: 609.452.3100 • F: 609.452.3122

Washington

1919 Pennsylvania Avenue, N.W.
Suite 550
Washington, DC 20006-3434
T: 202.333.8800 • F: 202.337.6065

West Palm Beach

515 N. Flagler Drive
Suite 1400
West Palm Beach, FL 33401
T: 561.833.9800 • F: 561.655.5551

Wilmington

1201 North Market Street
Suite 2300 • P.O. Box 1266
Wilmington, DE 19899
T: 302.421.6800 • F: 302.421.6813

SAUL EWING
ARNSTEIN
& LEHR^{LLP}